

WHELAN'S MINING & EXPLORATION, INC.

IBLA 81-932

Decided September 24, 1981

Appeal from decision of Alaska State Office, Bureau of Land Management, deeming unpatented mining claims abandoned and void, and declaring the recordation of the claims void. AA 40988 through AA 41002; AA 41020 through AA 41022; AA 41031 through AA 41038; AA 41139 through AA 41142; AA 41194 and AA 41196.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment--Mining Claims: Abandonment

The failure to file copies of the official record of notices of location of a mining claim within 90 days after the date of location must be deemed conclusively to constitute an abandonment of the mining claim. There is no provision for waiver of this mandatory requirement, and where delivery of the location notices is delayed by the Postal Service, the consequences of the late filing must be borne by the claimant.

2. Evidence: Presumptions--Mining Claims: Recordation

There is a legal presumption of regularity which supports the official acts of public officers and the proper discharge of their duties. Where the official time and date stamp of a BLM office is impressed upon a document, it is presumed that the impression is accurate, in the absence of a clear showing to the contrary by appellant.

APPEARANCES: Patrick D. Whelan, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Whelan's Mining & Exploration, Inc., has appealed the Alaska State Office, Bureau of Land Management (BLM), decision of July 28, 1981, which deemed certain unpatented mining claims 1/ abandoned and void, and declared the recordation of the claims with BLM void because the copies of the notices of location of the claims were not filed with BLM within 90 days after the date of location, as required by the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2(b).

The mining claims were located July 1, 3, and 10, 1980, and recorded in the Juneau Recording District. Copies of the notices of location were received by BLM for recordation on September 30, and October 3 and 10, 1980. In each case, receipt by BLM was after the 90th day following the date of location.

Appellant states that the copies of the recorded notices of location were not received from the Juneau Recording Office until September 22, 1980, at which time they were transmitted to BLM. The notices had not been filed with the Juneau Recording Office until August 25, 1980, because of ongoing work on the claims, which are in the bush. 2/ Appellant further states that mail from Boise, Idaho, to Anchorage, Alaska, usually takes only 24 hours, and seldom more than 48 hours, so the notices of location for the claims located on July 1, mailed from Boise on September 24, should have arrived in Anchorage and been delivered to BLM before September 29, the 90th day after the date of location. Appellant questions the date that BLM states was the date of receipt of the instruments.

[1] Section 314 of FLPMA, 43 U.S.C. § 1744 (1976), requires the owner of an unpatented mining claim located on Federal lands after October 21, 1976, to file a copy of the official record of the location notice in the proper BLM office, as designated by the Secretary of the Interior, within 90 days after the date of location. The statute also provides that failure to file timely such record shall be deemed conclusively to constitute an abandonment of the mining claim by the owner. The pertinent regulation, 43 CFR 3833.1-2, provides that "file" means "being received and date stamped by the proper BLM office" within 90 days after the date of location. Thus, even if the mailing were prevented by Postal Service error from reaching the BLM office timely,

1/ See Appendix.

2/ 43 CFR 3833.0-5(i) defines "copy of the official record of the notice of location" as a legible reproduction or duplicate of the original instrument of recordation of the mining claim which was or will be filed in the local jurisdiction where the claim is located, acceptable to the proper BLM office. Appellant could have filed copies of the location notices simultaneously in the Juneau recording office and in the BLM Alaska State Office.

that fact would not excuse appellant's failure to comply with the cited statutory requirements and the regulations. Glenn D. Graham, 55 IBLA 39 (1981); Everett Yount, 46 IBLA 74 (1980); James E. Yates, 42 IBLA 391 (1979). This Board has repeatedly held that a mining claimant, having chosen the Postal Service as his means of delivery, must accept the responsibility and bear the consequences of loss or untimely delivery of his filings. Edward P. Murphy, 48 IBLA 211 (1980); Everett Yount, *supra*; James E. Yates, *supra*; Amanda Mining & Manufacturing Association, 42 IBLA 144 (1979). Filing is accomplished only when a document is delivered to and received by the proper BLM office. Depositing a document in the mails does not constitute filing. 43 CFR 1821.2-2(f).

[2] There is a legal presumption of regularity which supports the official acts of public officers and the proper discharge of their duties. Where the official time and date stamp of a BLM office on an instrument reflects the document was received at "3:28 p.m., Sept. 30, 1980" it is presumed that the document was received at that time, in the absence of a clear showing to the contrary by appellant. Notwithstanding the allegation of appellant that the copies of the location notices were mailed from Boise, Idaho, on September 24, 1980, the envelope in which they were transmitted to BLM shows a postmark "Huston, ID, Sep. 25, 1980 PM." Other envelopes in the record from appellant to BLM show postmarks of September 30, and October 6, 1980, with receipt by BLM October 3, and October 10, 1980, respectively. The belief of appellant that mail from Boise to Anchorage takes only 24 to 48 hours travel time seems to be unsubstantiated.

The Board has no authority to excuse lack of compliance with the statute or to afford relief from the statutory consequences. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques

Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Edward W. Stuebing
Administrative Judge.

APPENDIX

BLM Serial No.	Claim Name	Located	Filed with BLM
AA-40988	YANKIE BASIN #1	July 1, 1980	September 30, 1980
AA-40989	YANKIE BASIN #2	July 1, 1980	September 30, 1980
AA-40990	YANKIE BASIN #3	July 1, 1980	September 30, 1980
AA-40991	YANKIE BASIN #4	July 1, 1980	September 30, 1980
AA-40992	YANKIE BASIN #5	July 1, 1980	September 30, 1980
AA-40993	YANKIE BASIN #6	July 1, 1980	September 30, 1980
AA-40994	YANKIE BASIN #7	July 1, 1980	September 30, 1980
AA-40995	YANKIE BASIN #8	July 1, 1980	September 30, 1980
AA-40996	YANKIE BASIN #9	July 1, 1980	September 30, 1980
AA-40997	YANKIE BASIN #10	July 1, 1980	September 30, 1980
AA-40998	YANKIE BASIN #11	July 1, 1980	September 30, 1980
AA-40999	YANKIE BASIN #12	July 1, 1980	September 30, 1980
AA-41000	YANKIE BASIN #13	July 1, 1980	September 30, 1980
AA-41001	YANKIE BASIN #14	July 1, 1980	September 30, 1980
AA-41002	YANKIE BASIN #15	July 1, 1980	September 30, 1980
AA-41020	Bull Consolated #1	July 1, 1980	September 30, 1980
AA-41021	Summit #1	July 1, 1980	September 30, 1980
AA-41035	EAGLE RIVER #7	July 1, 1980	September 30, 1980
AA-41036	EAGLE RIVER #8	July 1, 1980	September 30, 1980
AA-41037	EAGLE RIVER #9	July 1, 1980	September 30, 1980
AA-41038	EAGLE RIVER #10	July 1, 1980	September 30, 1980
AA-41139	California #1	July 1, 1980	October 3, 1980
AA-41140	Eagle River #2	July 1, 1980	October 3, 1980
AA-41141	Eagle River #1	July 1, 1980	October 3, 1980
AA-41142	Gold Standard #1	July 1, 1980	October 3, 1980
AA-41194	McKallick	July 10, 1980	October 10, 1980
AA-41196	Koby #1	July 3, 1980	October 10, 1980

